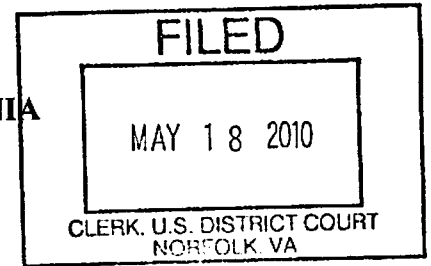


**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**



DANILO ESTEBAN GUERERA-SANDOVAL, #358250,

Petitioner,

v.

ACTION NO. 2:09cv238

**GENE M. JOHNSON,
Director of the Virginia Department of Corrections,**

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254. The petition alleges violation of federal rights pertaining to petitioner's convictions of murder, possession of a firearm by a convicted felon, and use of a firearm during the commission of murder.

The matter was referred to a United States Magistrate Judge for report and recommendation pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia. The Magistrate Judge filed his Report and Recommendation on April 2, 2010, recommending dismissal of the petition. By copy of the report, each party was advised of his right to file written objections to the findings and recommendations made by the Magistrate Judge. On April 19, 2010, the Court received petitioner's Objections to Magistrate's Report and Recommendation (Document No. 12). The respondent did not file objections, nor respond to petitioner's objections.


The Court, having reviewed the record and examined the objections to the Magistrate Judge's

Report, and having made de novo findings with respect to the portions objected to, does hereby adopt and approve the findings and recommendations set forth in the Report of the United States Magistrate Judge filed April 2, 2010. It is, therefore, ORDERED that the petition be DENIED and DISMISSED and that judgment be entered in favor of the respondent, as petitioner's claims are procedurally defaulted and he has failed to articulate sufficient cause or prejudice to exclude the default. To the extent the state court ruled on the merits of his evidentiary claim that claim is not cognizable in federal habeas review.

Petitioner may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty (30) days from the date of entry of such judgment.

Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right," therefore, the Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. See Miller-El v. Cockrell, 123 S.Ct. 1029, 1039 (2003).

The Clerk shall mail a copy of this Final Order to the petitioner and to counsel of record for the respondent.

/s/ 

MARK S. DAVIS
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
May 18, 2010